

**Dissenting Views to Accompany  
H.R.1369, the “To Prevent Discriminatory Taxation  
of Natural Gas Pipeline Property”**

We strongly oppose H.R. 1369, “To Prevent Discriminatory Taxation of Natural Gas Pipeline Property,” legislation that would restrict the state and local taxation of interstate natural gas pipelines. While proponents of H.R. 1369 maintain that federal legislation is needed to limit taxation and to minimize litigation, this legislation could have the opposite effect. In fact, enactment of H.R. 1369 would result in increased litigation that would be needed to determine its meaning and impact. This legislation is strongly opposed by the National Governors Association, the Federation of Tax Administrators, the Louisiana Tax Commission and the Montana Department of Revenue.

H.R. 1369 is problematic for several reasons. First, the property tax systems to which the pipelines and other property tax are subject to do not violate state constitutions or state laws. Second, H.R.1369 would provide new ground for litigation. Third, the legislative measure would unwisely grant federal courts jurisdiction over action arising under the legislation. Finally, this legislation would have a grave impact on tax revenues.

**Description of the Legislation**

H.R. 1369 would prohibit states from assessing interstate pipeline property taxes at a high ratio to true market value (the normal standard for assessing property), or at a higher tax rate than is the case for other commercial and industrial property. It also contains a provision that prevents “discrimination” in “any other tax” that might be levied on interstate pipelines. Finally, the bill provides that pipelines can pursue their claims under the Act in federal district court, rather than being required to pursue claims in state court and provides for specified relief for claims of discriminatory taxation of natural gas pipeline property.

**Background**

Some states (probably a majority) mostly in the western 2/3 of the country value pipelines (and certain other interstate transportation and traditional public utility property, e.g., electric and gas utilities, telephone companies, railroads and airlines) on a “unit valuation” basis. In unit valuation, the entity being assessed is valued in its entirety or as an ongoing enterprise as opposed to valuing individual pieces of real estate, individual pieces of machinery or individual buildings of the enterprise. In unit valuation, an appraiser will look at several ways of arriving at value, e.g., an income approach, cost approach, market value or sales approach (if data are available) and the like. The valuation of other commercial and industrial property primarily looks at the cost approach and sales figures if available and concentrates on the value of individual parcels rather than the value of the enterprise.

Pipeline owners argue that the manner in which they are assessed for property tax purposes in some states causes them to be valued higher (in relation to market value) than other commercial property. They contend this unit valuation approach tends to capture certain intangible values (e.g., good will, patents, etc.) and to lead to higher valuations than for other property. H.R. 1369 would provide protection from these higher taxes.

Conversely, State and local governments and tax groups perceive H.R. 1369 as an effort by the pipeline industry to secure a set of protections comparable to those provided to the railroad industry in the Railroad Revitalization and Regulatory Relief (4-R) Act of 1976.<sup>1</sup> The situations leading to the enactment of the legislation, however, are not comparable. Specifically, the unit valuation of property does not inherently lead to higher valuations or property than other forms of property valuation, so there is no certainty that the commercial property will be higher than other property tax. Indeed, the pipelines have not offered any specifics about states, statistical studies, or concrete evidence that can be investigated regarding higher valuation. Properly applied, unit valuation should reach fair market value. The issue of intangibles is really an issue of state law and whether it allows the valuation of intangibles in the unit value. Several states that use unit value specifically allow intangibles to be excluded to the degree that a value can be placed on them.

## **I. The current taxation system does not pose constitutional or state law violations.**

While proponents of the legislation claim that the property taxes are discriminatory in nature, it is clear that the property tax systems which apply to the pipeline and other property tax payers do not violate state constitutions or state law. Those tax systems have been approved by the citizens of the states and have been found constitutionally valid when challenged. To enact this legislation would effectively overturn taxation decisions made by voters and state elected officials.

Further, the property tax system poses no federal constitutional violations. The difference in property taxation ratios is the result of a state created taxation system adopted through the normal legislative process. As the varied tax classification system was fully vetted, there was no violation of Due Process or Equal Protection provisions. In addition, as the tax is only upon property within the state, there is no encroachment upon the Commerce clause. Finally, all opportunity is afforded to the pipelines to bring forth their grievances before the state court.

## **II. H.R. 1369 could provide new ground for litigation.**

If enacted, this legislation would spawn a myriad of litigation as to how it should be applied in individual states. Although the legislation is based on 4-R legislation which has already been enacted, there is still a degree of vagueness surrounding the legislation. In fact, there is certain to be a great deal of controversy and resulting litigation challenging the assessment ratio of commercial and industrial property in states and the application of the legislation. The 4-R Act, which was similar to this legislation, generated quite a number of challenges to state and local tax practices. Further, that legislation brought forth cases challenging the constitutionality of the bill, whether it was constitutional, whether it constituted an abrogation of the sovereignty immunity of the states, the techniques to determine the assessment ratio of various types of property, and other matters. It is likely that H.R. 1369 will create the same amount of confusion, objections and lawsuits.

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<sup>1</sup>In that instance, the railroad industry was in grave danger and regulations were needed to keep the industry solvent

### **III. The Legislation would unwisely grant federal courts jurisdiction over actions arising under the litigation**

Granting federal courts the authority to hear matters that arise under this legislation is both unnecessary and unwarranted. First, under the Federal Tax Injunction (28 U.S. C. §1341) federal courts should demur from hearing state taxation cases where there is a “plain, speedy and efficient” remedy available at the state level. In these matters, the state is more than capable of handling their judicial responsibility. There is no evidence that the state judiciary was unable to handle the state taxation matters. Further, each state has a variety of avenues to resolve the property tax administration matters including the state judicial systems, administrative review bodies, and the state legislature.<sup>2</sup>

Additionally, by allowing direct access to federal courts when challenging state and local property tax, this section of the legislation creates a certain group of litigants that will forgo the traditional state or local judicial or administrative review process. It is well known that the federal courts do not weigh tax matters in the same manner as states will must always consider the issues in the context of state constitutions, state laws, and the state tax system as a whole. The federal courts use a separate manner of precedent and reasoning that would create a disparity between litigants with access to the federal courts and those without access. State court management of these cases allows open access regarding tax matters and allows state taxation matters to be decided by state law experts.<sup>3</sup>

Finally, access to the federal court system could potentially disrupt the financial condition and threaten the financial integrity of affected local governments. Under this legislation, taxpayers would be able to withhold disputed taxes while the case moves forward. This would make it very difficult for local government to determine its tax base and to make decisions according to or to receive preliminary payment of taxes until years after they are due.

### **IV. H.R. 1956 reduces states tax revenue affecting the states ability to provide traditional state and local government services and is an unfunded mandate**

As a policy matter we would note that State and local governments work with the federal government, both providing essential government services like education and transportation. However, states are restricted from providing these services if their power of taxation is truncated or interfered with. Furthermore, it will be state officials and not Congress who will be held accountable if public services are reduced or personal income or property taxes are increased to compensate for the reduction in tax revenue resulting from the enactment of this legislation.

H.R. 1369 would also create an enormous unfunded mandated resulting in a several billion dollar loss for state revenues. According to the Federation of Tax Administrators, this legislative proposal would cost Louisiana approximately \$37 to \$40 million dollars, Montana, over \$22.5 million and Kansas would lose nearly \$45 million. As state governments, unlike the

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<sup>2</sup> In fact, the Louisiana Legislature considered legislation (House Bill 643) in the 2006 Regular Session, which would have reclassified public service pipelines as “other property” subject to assessment by local assessors at 15% of fair market value. The legislature chose to make no changes to existing Louisiana law.

<sup>3</sup>It is important to note that

federal government, are required to balance their budget, the loss of such a significant amount of revenue must be replaced by either increasing taxes or cutting programs. Without the necessary state tax revenues, states would suffer a devastating financial blow.

### **Conclusion**

H.R. 1369 is poorly drafted legislation that would provide unnecessary tax exemptions resulting in a huge revenue loss to states. In an era when our states are in desperate need of revenue for the protection of our citizens, it seems irresponsible that should we enact legislation that would reduce their funds. We should not pass special interest legislation that would pander to companies at the expenses of thousands of citizens.

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